



Crl.R.C.No.1134 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

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P.Sakthivel

... Petitioner / Accused

Vs.

C.S.Shankar

... Respondent / Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment and orders passed by the learned II Additional District and Sessions Judge, Tiruppur in C.A.No.84 of 2018, dated 11.02.2019, confirming the Judgment and orders passed by the learned Judicial Magistrate, Fast Track Court, Tiruppur in S.T.C.No.152/2012, dated 16.07.2018.

For Petitioner : Mr.H.Manojin,
Legal Aid Counsel

For Respondents : No appearance



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ORDER

Challenging the Judgment and Orders, dated 11.02.2019

passed in C.A.No.84 of 2018 by the learned II Additional District and Sessions Judge, Tiruppur, confirming the conviction and sentence imposed by the Judicial Magistrate, Fast track Court, Tiruppur, in S.T.C.No.152/2012, dated 16.07.2018, the present Criminal Revision is filed by the petitioner/Accused.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The brief case of the complainant in a nutshell is as follows :

- i. The accused borrowed a sum of Rs.4,00,000/- from the complainant on 30.08.2011 and executed a Promissory note (Ex.P1) promising to repay the principal together with interest @ 18% per annum. However, the accused did not pay any amount either towards interest or principal.



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- ii. After much persuasion by the complainant, the accused issued a cheque bearing No.682283 dated 24.11.2011 (Ex.P2) drawn on IndusInd Bank, Tiruppur, Chennai for a sum of Rs.4,00,000/-.
- iii. When the complainant presented the said cheque for collection on 25.11.2011 through his bankers namely Andhra Bank, Tiruppur, the same was returned on 26.11.2011 for the reason "Funds Insufficient", as is seen from the cheque Return memo (Ex.P3).
- iv. Therefore, the complainant issued a statutory notice dated 29.11.2011 (Ex.P4) to the accused calling upon him to pay the amount due under the cheque. However, the same was returned with an endorsement "Left and Not in Station" (Ex.P5 and Ex.P6).
- v. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast track Court, Tiruppur under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.152/2012.
- vi. The learned Judicial Magistrate, Fast track Court, Tiruppur, took cognizance of the offence under Section 138 of the Negotiable



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Instruments Act and issued summons to the accused under Section 204 Cr.P.C.

- vii. On the appearance of the accused, the copies of the case records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.
- viii. On the side of the complainant, the complainant examined himself as P.W.1 and one Selvaraj as P.W.2 and marked Ex.P1 to Ex.P7.
- ix. Thereafter, the accused was questioned under Section 313(1)(b) Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence.
- x. After full trial, the learned trial court judge, vide his judgment dated 16.07.2018, convicted the accused for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Simple imprisonment for six months and to pay a fine of Rs.2,50,000/-, in default, to undergo simple imprisonment for two months.



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xi. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.84 of 2018 before the II Additional District and Sessions Judge, Tiruppur.

xii. The learned II Additional District and Sessions Judge, Tiruppur after analysing the evidence on record, confirmed the findings recorded by the Trial Court Judge and dismissed the appeal, as against which the present Criminal Revision Case is filed by the accused.

4. Heard Mr.H.Manojin, learned Legal Aid Counsel for the Revision petitioner. Though the name of the respondent is printed in the cause list after issuing notice to him, there is no representation on his behalf.

5. At the outset it may be observed that the accused had not denied his signature either on the cheque (Ex.P2) or on the promissory note (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of N.I. Act unless the contrary is proved by the accused.



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6. Mr.H.Manojin, learned Legal Aid Counsel appearing for the revision petitioner would contend that the revision petitioner had already borrowed a sum of Rs.50,000/- during 2010 and discharged the same. The Cheque given by the revision petitioner at the time of borrowal was not returned by the complainant and on the contrary, he had misused the said cheque for the purpose of filing the private complaint.

7. Though it is contended that the revision petitioner had a transaction during the year 2010 with the complainant and the same was discharged on the very same year, it is not known as to why the revision petitioner did not issue any notice to the complainant, calling upon the latter to hand over the cheque issued by him. The present private complaint is filed in the year 2012. Even after filing of the private complaint, the revision petitioner did not take any action against the complainant for the alleged misuse of the cheque which was given by him to the complainant way back in 2010 for the reasons best known to him. Absolutely, there is no evidence on record to substantiate the contention of the revision petitioner.



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8. In the instant case, the complainant had proved his initial burden that the cheque was issued by the accused for the amount of Rs.4,00,000/- borrowed by him. The accused has not rebutted the presumption under Sections 118 and 139 of the Negotiable Instruments Act.

9. In the circumstances, the conviction and sentence passed by both the Courts below cannot be said to be perverse and therefore, the Criminal Revision Case is liable to be dismissed as devoid of merits.

10. In the result,

- i. the Criminal Revision Case is dismissed.
- ii. the Judgment dated 11.02.2019 in C.A.No.84 of 2018 passed by II Additional District and Sessions Court, Tiruppur and the Judgment dated 16.07.2018 in S.T.C.No.152/2012 passed by the Judicial Magistrate, Fast Track Court, Tiruppur, are confirmed.
- iii. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Judicial Magistrate, Fast track Court,



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Tiruppur, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

iv. This Court places on record its appreciation to Mr.H.Manojin, learned Legal Aid Counsel, for his valuable assistance in deciding this case. The High Court Legal service Committee is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the said counsel towards his fee.

12.04.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum

To

- 1.The II Additional District and Sessions Court, Tiruppur.
- 2.The Judicial Magistrate, Fast track Court, Tiruppur.



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R. HEMALATHA, J.

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